IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

CIT, JODHPUR **VS**. M/s Mangilal Didwania.

D.B. INCOME TAX REF. CASE NO.104/1998
against the order dated 15.1.1998 passed
by Income Tax Appellate Tribunal, Jaipur
in R.A. No.242/JP/97 for assessment
year 1990 – 91.

Date of judgment : 26th April, 2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. K.K. Bissa for the appellant.
Mr. Sanjeev Johari for the respondent.

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BY THE COURT:– (Per Hon'ble Mr. Rajesh Balia, J.)

Heard learned counsel for the parties.

The application has been moved under Section 256(2) of the Income Tax Act, 1961 by the Revenue seeking a direction to the Tribunal to state the case and refer the following question as question of law arising from the order dated 26.5.1997 of the Tribunal passed in the ITA

No.1343/JP/95 relating to assessment year 1990-91:-

> "Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was justified in law in quashing the order under Section 263 of the I.T. Act passed by the Commissioner of Income Tax?

The Assessing Officer had passed the assessment order on 30.12.1992. The Commissioner of Income Tax, considering that the assessment order has been passed without following proper enquiry which has resulted in an erroneous assessment order and prejudicial to the interest of Revenue, issued notice under Section 263 of the Income Tax Act, 1961 in exercise of its revisional jurisdiction. After notice, a detailed reply has been submitted by the assessee. The CIT concluded that :-

> "In view of the forgoing discussion, it is clear beyond any doubt that the assessment was completed in undue haste and without making proper investigation by the Assessing Officer, who is a revenue officer was bound to do."

On this finding, it held that assessment made under Section 143(3) by the Assessing Officer on 30th December, 1992 is erroneous and prejudicial to the interest of revenue and, therefore, the same was set aside with direction to the Assessing Officer to make a fresh

assessment order after enquiry.

On appeal, the Tribunal recorded a finding after considering the material on record as under:–

> "Thus, considering the facts and circumstances of the case, as also the material on record, we are quite convinced that the AO did enquire into the various aspects of the case before framing the assessment and hence there was no justification for the CIT to hold it as erroneous and prejudicial to the interest of the revenue, and thereby invoking jurisdiction u/s 263."

It also found that the assessment cannot be said to have been completed in undue haste.

We are of the opinion, that these are the findings of fact whether the Assessing Officer has made proper enquiry with due application of mind or not.

Undoubtedly, if proper enquiry has not been held, the Assessing Officer's order is liable to be revised under Section 263 by the CIT inter alia on the ground that the order of the Assessing Officer is erroneous and

prejudicial to the interest of Revenue having been made without proper enquiry. However, when the inquiry has been made, to what extent it can be said to be inadequate are the questions of fact defending on facts and circumstances of each case.

The Tribunal after considering the material available on record was satisfied that the proper enquiry was made by the Assessing Officer before passing the assessment order and he has applied his mind on the relevant material which was brought on record. It does not give rise to any question of law.

Consequently, the order of the Tribunal rejecting the application under Section 256(1) by holding that the order of Tribunal does not give rise to any question of law is not erroneous and therefore, the application under Section 256(2) must fail. The same is hereby dismissed.

No costs.

[R.P. VYAS], J. [RAJESH BALIA], J.

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